

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE**

NORFOLK COUNTY RETIREMENT SYSTEM,
individually and on behalf of all others similarly
situated,

Plaintiff,

- v. -

COMMUNITY HEALTH SYSTEMS, INC.,
WAYNE T. SMITH, and W. LARRY CASH,

Defendants.

Civil Action No. 11-cv-0433

Judge John T. Nixon
Magistrate Judge E. Clifton Knowles

**LEAD PLAINTIFF'S NOTICE OF RECENT SETTLEMENT BETWEEN THE U.S.
JUSTICE DEPARTMENT AND COMMUNITY HEALTH SYSTEMS, INC.**

Lead Plaintiff, the New York City Pension Funds (the "NYC Funds"), submits herewith and in further opposition to Defendants Motion to Dismiss (Dkt. No. 73), the attached press release (the "DOJ Release") issued on August 4, 2014 by the United States Department of Justice ("DOJ") detailing the global settlement of litigation between the DOJ and Defendant Community Health Systems, Inc. ("CHS") (Exhibit "A" hereto).

In its release, the DOJ disclosed that it had reached a settlement whereby CHS would be required to pay \$98.15 million to resolve multiple lawsuits throughout the nation which alleged that CHS "knowingly billed government healthcare programs for inpatient services that should have been billed as outpatient or observation services." *See* Ex. A at ¶ 1. Specifically, the DOJ Release reported that the DOJ charged that from 2005 through 2010, "CHS engaged in a deliberate corporate-driven scheme to increase inpatient admissions of Medicare, Medicaid, and the Department of Defense's (DOD) TRICARE program beneficiaries over the age of 65 who originally presented to the emergency room departments at 119 CHS hospitals." *Id.* at ¶ 3. These

hospitals where located across 20 States. The DOJ Release also identified nine whistleblowers, including CHS' physicians, nurses and administrators. *Id.* at ¶ 10.

The DOJ Release further stated:

Charging the government for higher inpatient services that patients do not need wastes the country's health care resources . . . [and] providing physicians with financial incentives to refer patients compromises medical judgment and risks depriving patients of the most appropriate health care available.

Id. at ¶ 2. The DOJ Release also quotes, among others, David Rivera, the U.S. Attorney for the Middle District of Tennessee, who stated: "This is the largest False Claims Act settlement in this district and it reaffirms this office's commitment to investigate and pursue health care fraud that compromises the integrity of our health care system." *Id.* at ¶ 5.

The announcement of this settlement and the details of the DOJ's claims provided in the DOJ Release further support Lead Plaintiff's allegations that CHS knowingly, or recklessly, engaged in a scheme to boost admissions at most, if not all, of its hospitals (Complaint ¶¶ 11, 58, 82-83, 129-138, 134-35); that this scheme was orchestrated from its most senior offices at its headquarters in Tennessee (*see, e.g., id.* at ¶¶ 8-12, 46, 49, 53-56, 59-69, 81-96, 128-158, 209-350; and that CHS failed to disclose this scheme to its investors (*see, e.g., id.* at ¶ 7, 15, 18, 24). This information is also relevant to the discussion of the alleged misstatements by CHS regarding the source of its success. *See* NYC Funds' Opposition to Defendants' Motion to Dismiss, at 15-24. Dkt. No. 83.

Dated: August 6, 2014

Respectfully submitted,

**LOWEY DANNENBERG COHEN
& HART, P.C.**

By: /s/ Barbara J. Hart
Barbara J. Hart (admitted *pro hac vice*)
David C. Harrison (admitted *pro hac vice*)
Scott V. Papp (admitted *pro hac vice*)
One North Broadway, Suite 509
White Plains, NY 10601-2310
Telephone: 914-997-0500
Telecopier: 914-997-0035
E-mail: bhart@lowey.com
E-mail: dharrison@lowey.com
Email: spapp@lowey.com

Counsel for Lead Plaintiff

PROVOST UMPHREY, LLP
W. Michael Hamilton
TN Bar No. 10720
2021 Richard Jones Rd., Suite 300
Nashville, Tennessee 37215
Telephone: 615-242-0199
Fax: 615-256-5922

Local Counsel

EXHIBIT A

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Monday, August 4, 2014

**Community Health Systems Inc. to Pay \$98.15 Million to Resolve
False Claims Act Allegations**

The Justice Department announced today that Community Health Systems Inc. (CHS), the nation's largest operator of acute care hospitals, has agreed to pay \$98.15 million to resolve multiple lawsuits alleging that the company knowingly billed government health care programs for inpatient services that should have been billed as outpatient or observation services. The settlement also resolves allegations that one of the company's affiliated hospitals, Laredo Medical Center (LMC), improperly billed the Medicare program for certain inpatient procedures and for services rendered to patients referred in violation of the Physician Self-Referral Law, commonly known as the Stark Law. CHS is based in Franklin, Tennessee, and has 206 affiliated hospitals in 29 states.

"Charging the government for higher cost inpatient services that patients do not need wastes the country's health care resources," said Assistant Attorney General Stuart F. Delery for the Justice Department's Civil Division. "In addition, providing physicians with financial incentives to refer patients compromises medical judgment and risks depriving patients of the most appropriate health care available. This department will continue its work to stop this type of abuse of the nation's health care resources and to ensure patients receive the most appropriate care."

The United States alleged that from 2005 through 2010, CHS engaged in a deliberate corporate-driven scheme to increase inpatient admissions of Medicare, Medicaid and the Department of Defense's (DOD) TRICARE program beneficiaries over the age of 65 who originally presented to the emergency departments at 119 CHS hospitals. The government further alleged that the inpatient admission of these beneficiaries was not medically necessary, and that the care needed by, and provided to, these beneficiaries should have been provided in a less costly outpatient or observation setting. CHS agreed to pay \$89.15 million to resolve these allegations. The settlement does not include hospitals that CHS acquired from Health Management Associates (HMA) in January 2014.

In addition, the government alleged that from 2005 through 2010, one of CHS's affiliated hospitals, LMC in Laredo, Texas, presented false claims to the Medicare program for certain cardiac and hemodialysis procedures performed on a higher cost inpatient basis that should have been performed on a lower cost outpatient basis. The government also alleged that from 2007 through 2012, LMC improperly billed Medicare for services referred to LMC by a physician who was offered a medical directorship at LMC, in violation of the Stark Law. The Stark Law prohibits a hospital from submitting claims for patient referrals made by a physician with whom the hospital has an improper financial relationship, and is intended to ensure that a physician's medical judgment is not compromised by improper financial incentives, and is instead based on the best interests of the patient. CHS agreed to pay \$9 million to resolve the allegations involving LMC.

"This is the largest False Claims Act settlement in this district and it reaffirms this office's commitment to investigate and pursue health care fraud that compromises the integrity of our health care system," said U.S. Attorney David Rivera for the Middle District of Tennessee. "This office is committed to ensuring that

all companies billing government healthcare programs are responsible corporate citizens and that hospital providers do not engage in schemes to increase medically unnecessary in-patient admissions of government healthcare program beneficiaries in order to increase profits.”

“This settlement demonstrates our commitment to working with our law enforcement partners and with the Department of Justice to protect the integrity of our nation’s health care system,” said U.S. Attorney Kenneth Magidson of the Southern District of Texas. “Put simply, these types of fraudulent practices will not be tolerated and the investigation and resolution of such claims will continue to be a high priority of this office.”

“Health care providers should make treatment decisions based on patients’ medical needs, not profit margins,” said U.S. Attorney Anne M. Tompkins for the Western District of North Carolina. “We will not allow this type of misconduct to compromise the integrity of our health care system.”

As part of today’s agreement, CHS entered into a Corporate Integrity Agreement with the U.S. Department of Health and Human Services - Office of Inspector General (HHS-OIG), requiring the company to engage in significant compliance efforts over the next five years. Under the agreement, CHS is required to retain independent review organizations to review the accuracy of the company’s claims for inpatient services furnished to federal health care program beneficiaries.

“In an effort to ensure the company’s fraudulent past is not its future, CHS agreed to a rigorous multi-year Corporate Integrity Agreement requiring that the company commit to compliance with the law,” said Inspector General Daniel R. Levinson, of the U.S. Department of Health and Human Services. “The dedicated work of OIG’s investigators, auditors, and attorneys, in concert with our law enforcement partners, has again resulted in the recovery of taxpayer dollars and better protection against fraud in the future.”

The settlement resolves lawsuits filed by several whistleblowers under the *qui tam* provisions of the False Claims Act, which permit private parties to file suit on behalf of the government and obtain a portion of the government’s recovery. Those relators are Kathleen Bryant, former Director of Health Information Management at CHS’s Heritage Medical Center in Shelbyville, Tennessee; Rachel Bryant, former nurse at CHS’s Dyersburg Hospital in Dyersburg, Tennessee; Bryan Carnithan, former Emergency Medical Services Coordinator at CHS’ Heartland Hospital in Marion, Illinois; Amy Cook-Reska, former coder for CHS’ LMC in Laredo; Sheree Cook, former nurse at CHS’s Heritage Medical Center in Shelbyville; James Doghramji, former internal medicine and emergency room physician at CHS’s Chestnut Hill Hospital in Philadelphia; Thomas Mason, former emergency room physician at Lake Norman Regional Medical Center in Mooresville, North Carolina; Scott Plantz, former emergency room physician at CHS’s Longview Regional Medical Center in Longview, Texas; and Nancy Reuille, former nurse and Supervisor of Case Management at CHS’s Lutheran Hospital in Fort Wayne, Indiana. The relators’ share of the settlement has not yet been determined.

This settlement illustrates the government’s emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by Attorney General Eric Holder and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than \$20.2 billion through False Claims Act cases, with more than \$14 billion of that amount recovered in cases involving fraud against federal health care programs.

This settlement was the result of a coordinated effort by the U.S. Attorney’s Offices for the Middle District of

Tennessee, Southern District of Texas, Northern and Southern Districts of Illinois, Northern District of Indiana and Western District of North Carolina; the Civil Division's Commercial Litigation Branch; HHS-OIG; DOD's Defense Health Agency - Program Integrity Office and the FBI.

The lawsuits are captioned *United States ex rel. Bryant v. Community Health Systems, Inc., et al.*, Case No. 10-2695 (S.D. Tex.); *United States ex rel. Carnithan v. Community Health Systems, Inc., et al.*, Case No. 11-cv-312 (S.D. Ill.); *United States ex rel. Cook-Reska v. Community Health Systems, Inc., et al.*, Case No. 4:09-cv-01565 (S.D. Tex.); *United States ex rel. James Doghramji; Sheree Cook; and Rachel Bryant v. Community Health Systems Inc., et al.*, Case No. 3-11-cv-00442 (M.D. Tenn.); *United States ex rel. Mason v. Community Health Systems, Inc., et al.*, Case No. 3:12-cv-817 (W.D.N.C.); *United States ex rel. Plantz v. Community Health Systems, Inc., et al.*, Case No. 10C-0959 (N.D. Ill.); *United States ex rel. Reuille v. Community Health Systems Professional Services Corporation, et al.*, Case No. 1:09-cv-007 RL (N.D. Ind.). The claims resolved by this agreement are allegations only and there has been no determination of liability.

14-822

Civil Division

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2014, a copy of Lead Plaintiff New York City Pension Funds' Notice of Recent Settlement Between the U.S. Justice Department and Community Health Systems, Inc., with attached Exhibit "A," was filed with the Clerk of the Court using the CM/ECF system which will automatically serve a copy of same upon all counsel of record, as identified as follows:

<p>Joel A. Blanchet Peter D. Doyle James M. Cooper Lisa V. LeCointe-Cephas Kirkland & Ellis LLP Citigroup Center 601 Lexington Avenue New York, NY 10022-4611 Email: joel.blanchet@kirkland.com Email: peter.doyle@kirkland.com Email: Max.cooper@kirkland.com Email: Lisa.LeCointe-Cephas@kirkland.com</p> <p><i>Counsel for Defendants Community Health Systems, Inc., Wayne T. Smith, W. Larry Cash, and Thomas Buford</i></p>	<p>William Michael Hamilton Provost, Umphrey Law Firm, LLP 4205 Hillsboro Pike Suite 303 Nashville, TN 37215 Email: mhamilton@pulf.com</p> <p><i>Local Counsel for Lead Plaintiff New York City Pension Funds</i></p>
<p>John R. Jacobson James N. Bowen Milton S. McGee, III Riley, Warnock & Jacobson PLC 1906 West End Avenue Nashville, TN 37203 Email: jjacobson@rwjplc.com Email: jimbowen@rwjplc.com Email: tmcgee@rwjplc.com</p> <p><i>Counsel for Defendants Community Health Systems, Inc., Wayne T. Smith, W. Larry Cash, and Thomas Buford</i></p>	<p>Seth D. Fier Proskauer Rose LLP Eleven Times Square New York, New York 10036-8299 Email: sfier@proskauer.com</p> <p><i>Counsel for Defendants Community Health Systems, Inc., Wayne T. Smith, W. Larry Cash, and Thomas Buford</i></p>

<p>Christopher J. Keller Michael W. Stocker Rachel A. Avan Labaton Sucharow LLP 140 Broadway New York, NY 10005 Email: ckeller@labaton.com Email: mstocker@labaton.com Email: ravan@labaton.com</p> <p><i>Counsel for Norfolk County Retirement System, Alberta Investment Management Corp. and State-Boston Retirement System</i></p>	<p>James Gerard Stranch, IV Branstetter, Stranch & Jennings 227 Second Avenue, N – 4th Floor Nashville, TN 37201 Email: gstranch@branstetterlaw.com</p> <p><i>Counsel for Norfolk County Retirement System, Alberta Investment Management Corp. and State-Boston Retirement System</i></p>
<p>Jeffrey A. Berens Dyer & Berens LLP 303 E. 17th Ave. – Suite 300 Denver, CO 80203 Email: Jeff@dyerberens.com</p> <p><i>Counsel for De Zheng</i></p>	<p>James L. Davidson Greenwald Davidson PLLC 5550 Glades Road , Suite 500 Boca Raton, FL 33431 Email: jdavidson@mgjdlaw.com</p> <p><i>Counsel for De Zheng</i></p>
<p>Robert J. Robbins David R. George Robbins Geller Rudman & Dowd LLP 120 E. Palmetto Park Road – Suite 500 Boca Raton, FL 33432 Email: rrobbins@rgrdlaw.com Email: dgeorge@rgrdlaw.com</p> <p><i>Counsel for De Zheng</i></p>	<p>Michael I. Fistel, Jr. Johnson & Weaver, LLP 40 Powder Springs Street Marietta, GA 30064 Email: michaelf@johnsonandweaver.com</p> <p><i>Counsel for De Zheng</i></p>
<p>Frederic S. Fox Joel B. Strauss Pamela A. Mayer Kaplan Fox & Kilsheimer LLP 850 Third Ave. – 14th Floor New York, NY 10022 Email: ffox@kaplanfox.com Email: strauss@kaplanfox.com Email: pmayer@kaplanfox.com</p> <p><i>Counsel for Minneapolis Firefighters' Relief Association</i></p>	<p>Michael K. Radford Flynn & Radford 320 Seven Springs Way, Suite 150 Brentwood, TN 37027 Email: mrادford@allen-kopet.com</p> <p><i>Counsel for Minneapolis Firefighters' Relief Association</i></p>

Richard A. Lockridge Karen H. Riebel Lockridge Grindal & Nauen, PLLP 100 Washington Ave. S. – Suite 2200 Minneapolis, MN 55401 Email: lockrra@locklaw.com Email: khriebel@locklaw.com <i>Counsel for Minneapolis Firefighters' Relief Association</i>	David S. Hagy David S. Hagy, Attorney at Law 1507 16th Avenue South Nashville, TN 37212 Email: dhagy@hagylaw.com <i>Counsel for General Retirement System of the City of Detroit</i>
--	--

Dated: August 6, 2014

/s/ Scott V. Papp

Scott V. Papp, Esq.
**LOWEY DANNENBERG COHEN
& HART, P.C.**
One North Broadway, Suite 509
White Plains, NY 10601
Ph: 914-997-0500
Fax: 914-997-0035
E-mail: spapp@lowey.com

Attorney for Lead Plaintiff New York City Pension Funds